



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Mr. T. M. Trimble  
State Department of Education  
Austin, Texas

Dear Sir:

Opinion No. 0-2454  
Re: Authority of County Superintendent to refuse to approve vouchers for janitor's salary.

We are in receipt of your letter of May 24, 1940, requesting an opinion by this Department, based upon the following facts as shown by a letter addressed to you from H. C. Hinton, County School Superintendent, El Paso County, Texas:

"We have a janitor in Courchesne School who is not an American citizen. He has been a janitor in this school for approximately 20 years. Six years ago he took out his first papers and assured me that he would complete his naturalization as soon as possible. He is a man of about 60 years of age and except for the fact that he can not speak English is one of the best janitors we have ever had. It is the recommendation and desire of the County Superintendent that he be replaced with an American citizen with which the local school board does not agree. The above school is in a common school district."

You request our opinion as to whether the County Superintendent is authorized, under the above facts, to refuse to approve a voucher of the local school board in payment of said janitor for his services.

We have carefully searched the constitution and statutes of Texas and find no provision requiring that a janitor in a common school district be an American citizen or be able to

speak the English language. The statutes contain no requirement that a janitor secure a teachers' or other certificate from the Department of Education and it is a matter of common knowledge that the duties of a janitor do not include teaching and giving courses of instruction in the public schools. Articles 2880, et seq., Revised Civil Statutes, 1925, as amended and Article 288, Penal Code, as amended, therefore are not applicable.

Article 2749, Revised Civil Statutes, 1925, provides that the board of trustees of a common school district shall have the management and control of the public schools and public school grounds of their district, employ teachers, and approve all claims against the school funds of their district. All property of the school district is placed under the control of the district trustees by the provision of Article 2754, Revised Civil Statutes, 1925. Section 2 of Article 2827, Revised Civil Statutes, 1925, provides that local school funds from district taxes and other sources may be used, among other things, for the payment of "janitors and other employees."

Article 2690, Revised Civil Statutes, 1925, provides that the county superintendent shall have immediate supervision of all matters pertaining to public education in his county, confer with teachers and trustees, and give them advice when needed.

Article 2693, Revised Civil Statutes, 1925, reads as follows:

"The county superintendent shall approve all vouchers legally drawn against the school fund of his county. He shall examine all the contracts between the trustees and teachers of his county, and if, in his judgment, such contracts are proper, he shall approve the same; provided, that in considering any contract between a teacher and trustees he shall be authorized to consider the amount of salary promised to the teacher. He shall distribute all school blanks and books to the officers and teachers of the public schools, and shall make such reports to the State Superintendent as may be required by that officer. He shall discharge such other duties as may be prescribed by the State Superintendent. (Acts 1905, p. 263.)"

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The authorization of the county superintendent to exercise general supervision over the common schools of the county does not carry with it the authority to substitute his judgment for that of the board of trustees when acting within the scope of their authority. *Peavy vs. Carlile*, Supreme Court, not yet reported. Article 2693 requires the county superintendent to approve "all vouchers legally drawn against the school fund of his county." No facts are presented in the letter of request which show that the warrants in question are not legally drawn against the proper fund.

Since, under the facts as stated, no valid reason or ground in law is given as a basis for the refusal of the county superintendent to approve the vouchers in question, it is our opinion that he is without authority to refuse approval.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Cecil C. Cammack*  
Cecil C. Cammack  
Assistant

CCC:N

APPROVED JUN 18, 1940

*George B. Mann*

ATTORNEY GENERAL OF TEXAS

